

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **200815016**

Release Date: 4/11/2008

Index Number: 7701.00-00, 9100.31-00

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B1  
PLR-131996-07  
Date:  
January 07, 2008

Legend

X =

Country =

Province =

Date 1 =

Treaty =

Year 1 =

Year 2 =

Dear :

This letter responds to a letter dated June 28, 2007, submitted on behalf of X, requesting a ruling under § 301.9100-3 of the Procedure and Administration Regulations that X be granted an extension of time to make an election to be classified as a corporation.

Facts

X, a resident of Country with which the United States has an income tax treaty, was formed as a general partnership under the laws of Province, Country on Date 1. X was eligible to make an election to be treated as a corporation for federal tax purposes

effective Date 1. However, Form 8832, *Entity Classification Election*, was not timely filed. X represents that it is engaged in a U.S. trade or business but that it does not have a U.S. permanent establishment.

### Law and Analysis

Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an "eligible entity") can elect its classification for federal tax purposes. A "business entity" is any entity recognized for federal tax purposes that is not properly classified as a trust under § 301.7701-4 or otherwise subject to special treatment under the Internal Revenue Code.

Section 301.7701-3(b)(2)(i) provides that except as provided in § 301.7701-3(b)(3), unless the entity elects otherwise, a foreign eligible entity is--(A) A partnership if it has two or more members and at least one member does not have limited liability; or (B) An association if all members have limited liability; or (C) Disregarded as an entity separate from its owner if it has a single owner that does not have limited liability.

Section 301.7701-3(c)(1)(i) provides that to elect to be classified other than as provided in § 301.7701-3(b), an eligible entity must file Form 8832 with the designated service center. Section 301.7701-3(c) provides that an entity classification election must be filed on Form 8832 and can be effective up to seventy-five (75) days prior to the date the form is filed or up to twelve (12) months after the date on which the form is filed.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines the term "regulatory election" as an election whose due date is prescribed by a regulation published in the Federal Register or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make the election.

Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections.

Section 301.9100-3 provides the standards the Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Under § 301.9100-3, a request for relief will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief will not prejudice the interests of the government.

Conclusion

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-1 and § 301.9100-3 have been satisfied. As a result, X is granted an extension of time of 60 days from the date of this letter to elect to be classified as an association taxable as a corporation for federal income tax purposes, effective Date 1. The election should be made by filing Form 8832 with the appropriate service center. A copy of this letter should be attached to the election. Because X is relying on a treaty-based return position, X must also file Form 8833, Treaty-Based Return Position Disclosure under § 6114 or 7701(b) attached to Form 1120-F, U.S. Income Tax Return of a Foreign Corporation for each year during the period from Year 1 to Year 2.

Except as specifically set forth herein, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, we express or imply no opinion as to the application of the Treaty to X or its partners, in particular whether X's income in the relevant taxable years would be exempt from tax under Article VII of the Treaty.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

/s/

William P. O'Shea  
Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter  
Copy for § 6110 purposes

CC: